

CF 43M ①

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 71/2006

Single Bench

APPELLANT
PLAINTIFF

:- ✓ Bajnath Prasad Soni, aged about 65 years, son of late Shri Hariram Soni, Occupation- Agriculturist, resident of village Fundurdihari, Police Station and Tahsil Ambikapur, District Surguja [C.G.].

VERSUS

RESPONDENTS
DEFENDANTS

- :-
- 1] ✓ State of Chhattisgarh Through- The Collector, Surguja, Ambikapur, District Surguja [C.G.].
 - 2] ✓ Director, Krishi Upaj Mandi, Ambikapur, District Surguja [C.G.].
 - 3] ✓ Krishi Upaj Mandi Samiti, through the Secretary, Ambikapur, District Surguja.

P.R. No. 387/06
Presented by Shri. P.K. Mishra
dated 10/12/06

MEMORANDUM OF APPEAL UNDER SECTION 100 OF THE
CODE OF CIVIL PROCEDURE 1908

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

SECOND APPEAL NO.71 OF 2006

Baijnath Prasad Soni

versus

State of Chhattisgarh and others

ORDER

Post for 3-5-2006

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

SECOND APPEAL NO.71 OF 2006

Appellant
Plaintiff

Bajnath Prasad Soni

versus

Respondents
Defendants

State of Chhattisgarh and others

Present : Mr. V.K.Pandey, learned counsel for the appellant.
 Mr. Akhil Agrawal, learned Panel Lawyer for respondent
 No.1/State.

ORDER
 (Passed on 3rd-5-2006)

This is plaintiff's second appeal under Section 100 of the Code of Civil Procedure, as the Civil Appeal No.13-A/2005, preferred by the appellant against dismissal of Civil Suit No.13-A/1998 vide judgment and decree dated 23-10-1998 passed by Civil Judge Class-I, Ambikapur, has been further dismissed vide impugned judgment and decree dated 2-12-2005.

2. The case of the plaintiff before the trial Court was that he was in possession over a part of the land bearing Khasra No.27/9 area 4.46 acres since 35-36 years on the date of filing the suit. He obtained the suit land after clearing the jungle and 5-6 years thereafter, he is residing there by erecting a hut over the suit land in the year 1960 and thus he has perfected his title by adverse possession. Even otherwise, as per Government Policy, he was entitled for allotment of the suit land. The land in question has been transferred

to defendant No.2, which is illegal, and in the aforesaid circumstances, a decree of declaration of title and perpetual injunction against interference in his possession was prayed for.

3. Defendant No.1 was proceeded *ex parte* and defendant No.2, Director, Krishi Upaj Mandi did not file written statement and defendant No.3, Krishi Upaj Mandi Samiti, in its written statement, has denied the averment in the plaint and has stated that the land in question has been allotted to the Krishi Upaj Mandi and after the allotment, the Mandi undertook construction and the plaintiff raised a dispute. The plaintiff has no title to the suit property. On the basis of the pleadings of the plaintiff and the defendant No.3, issues were framed and after recording the statement of the witnesses, the suit was dismissed by the learned Civil Judge by recording a finding *inter alia* that the plaintiff has not perfected his title by adverse possession and, therefore, he is not entitled for declaration of title and is also not entitled for perpetual injunction, and accordingly the suit was dismissed with costs.

4. The civil appeal preferred by the appellant was also dismissed by the impugned judgment with an identical finding.

5. Learned counsel for the appellant submits that the defendant No.1, the State has been proceeded *ex parte* and, therefore, the averment of the plaintiff in the plaint remains unrebutted, wherein the plaintiff has pleaded that he was in open, peaceful, uninterrupted and continuous possession for the last 35-36 years and as such perfected his title by adverse possession, however, both the Courts below have erroneously held that the plaintiff has failed to prove open, peaceful, uninterrupted and continuous possession over the suit land for the period of more than 30 years. In order to perfect his title by

adverse possession as per Article 112 of the Limitation Act, 1963, relying upon the judgment of the Madhya Pradesh High Court in the matter of Lal Bahadur Singh vs. State of M.P., reported in 1998(2) M.P.L.J. 26, it is submitted that the plaintiff had constructed a house and remained in continuous and peaceful possession for more than 30 years and a mere abortive attempt by the State to evict the plaintiff by starting a proceeding under Section 248 of the Land Revenue Code in the subsequent years would not interrupt or arrest running time against the State so as to bar claim of the plaintiff on the ground of adverse possession. It is argued that on the facts and circumstances of the case and oral and documentary evidence available on record, following substantial questions of law arise for adjudication of this appeal :-

- (1) "Whether both the Courts below were justified in holding that the plaintiff has not accrued any right over the suit land on the ground of adverse possession?
- (2) Whether both the Courts below have committed an error of law by holding that the suit filed by the plaintiff is barred under Section 57 of the Land Revenue Code?

6. Heard learned counsel for the appellant.

7. From the perusal of oral and documentary evidence available on record, it is evident that the plaintiff has not filed any document regarding title of the suit land and his claim is based solely on the ground of adverse possession. Though the plaintiff has claimed that 35-36 years prior to the filing of the suit, he came into possession of the suit land and 5-6 years thereafter, in the year 1960, he constructed a hutment over the suit land and since then he is constantly residing there along with his family peacefully. The plaintiff has filed the instant suit on 3-12-1982. The Courts below, relying upon the averments in the plaint

as also the statement on oath of the plaintiff, have arrived at the conclusion that even according to the plaintiff's own pleadings and oral evidence, date of possession of the plaintiff may be assessed to be in the year 1954/1956, whereas the suit has been filed in the year 1982. Thus, at the time of filing the suit, the period, for which the plaintiff was in possession, has been assessed at 26 years approximately, whereas in order to perfect title by adverse possession against the State, the period prescribed is 30 years as per Article 112 of the Limitation Act, 1963. From the documents of Ex.P-2 to P-5 filed by the plaintiff also, possession of more than 30 years over the suit land is not established. Thus, there is concurrent finding of fact by both the Courts below that the plaintiff has failed to establish his title by adverse possession. The above finding is based on proper appreciation of pleadings, oral and documentary evidence available on record. So far as the judgment in the matter of Lal Bahadur Singh (Supra) is concerned, in the above cited case, from the material available on record, it was held that the plaintiff was in uninterrupted possession since 1951 and the suit was filed in the year 1992 and as such it was held that the plaintiff had established his uninterrupted, continuous, peaceful and open possession over the suit land for more than 40 years.

8. In the aforesaid facts and circumstances, this Court is of the considered opinion that both the Courts below have not committed any illegality and no substantial question of law is involved in the instant appeal for its adjudication. The appeal is devoid of merit and the same is dismissed at the motion stage itself.

Sd/-
Dhirendra Mishra
Judge